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Testimony

Before the Subcommittee on Immigration and Claims,
Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at
10:00 a.m.,
Thursday,
June 29, 2000

VISA ISSUANCE

Observations on the
Issuance of Visas for
Religious Workers

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GAO/T-NSIAD-00-207 Religious Worker Visas
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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the issuance of visas for religious workers entering the United States. As you know, in 1990, Congress established special immigrant and nonimmigrant visa categories for religious workers¹, including religious professionals and ministers, because of domestic shortages in these positions cited by religious organizations. In 1998, the most recent year for which we have data, religious worker visas constituted about 11,000 of the 6.4 million immigrant (permanent) and nonimmigrant (temporary) visas issued. The Department of State and the Immigration and Naturalization Service (INS) share responsibility for issuing visas and admitting aliens into the United States. As a result of some fraud investigations in the mid-1990s, both agencies have expressed concern that some individuals and organizations that sponsor religious workers may be taking advantage of this category to enable unqualified aliens to enter or stay in the United States illegally.

My testimony today will focus on (1) the extent and nature of any fraud² the Department of State and INS have identified in the religious worker visa program³ and (2) any steps these two agencies have taken or plan to take to change the visa screening process. My

¹ Our testimony focuses on those in vocations such as nuns and monks and those engaged in work related to a traditional religious function, including liturgical workers, religious instructors, counselors, cantors, workers in religious hospitals, and missionaries.

² Immigration fraud involves the willful intent to circumvent the immigration laws of the United States by submitting false documents or misrepresenting material facts.

³ By "program," we mean all of the requirements, processes, and procedures related to the issuance of religious worker visas.

testimony is based on our March 1999 report⁴ and on some additional information obtained from INS and the Department of State.

SUMMARY

Although INS and the State Department have identified some program fraud through the visa screening process and investigations, they do not have data or analysis to firmly establish the extent of fraud in the religious worker visa program. At our request, INS compiled information showing that it has conducted 54 investigations from 1994 through 1998. In addition, a 1998 State Department survey of 83 overseas posts identified instances of potential fraud uncovered during the visa screening process. The nature of the fraud uncovered by INS and State typically involved two situations: (1) applicants making false statements about their qualifications as religious workers or their exact plans in the United States or (2) conspiracy between an applicant and a sponsoring organization to misrepresent material facts about the applicant's qualifications or the nature of the position to be filled. INS and State sometimes detect fraud schemes when a sponsoring organization petitions the Service for hundreds of religious workers at a time.

Since INS and State are not confident that the agencies screening process is identifying all unqualified applicants and sponsoring organizations, INS, with State's support, is considering a regulatory change and changes to the visa screening process. At the time of our March 1999 review, INS had proposed a regulatory change to expressly require

⁴ See Visa Issuance: Issues Concerning the Religious Worker Visa Program (GAO/NSIAD-99-67, Mar. 26, 1999).

that immigrant religious worker visa applicants have full-time prior work experience and work for the religious organization on a full-time basis in the United States. Other changes were to include (1) requiring an applicant to submit additional evidence of his or her qualifications, (2) requiring the sponsoring organization to submit additional evidence regarding its ability to financially support the applicant, and (3) incorporating new software applications that alert reviewers to organizations filing petitions for numerous workers.

As of June 2000, the proposed regulatory change had not been made. On the procedural changes, INS indicated it will continue to support the requirement for more information from visa applicants and may include this requirement as part of the proposed regulatory change. Given that they already have the authority to request additional information from the petitioning organizations, the INS says that no additional procedural changes are needed. According to INS officials, software changes have been made to detect multiple filings by organizations.

INS and State are attempting to balance the need to screen out unqualified applicants with the religious worker visa program's original purpose of facilitating the entry of qualified religious workers. The program modifications that INS is undertaking or plans to undertake to verify the accuracy of petitions for immigrant religious visas are reasonable steps to improve program integrity. If implemented, the modifications should help to better screen visa applicants and religious organizations.

BACKGROUND

The Immigration and Nationality Act of 1990 established special immigrant and nonimmigrant categories for religious workers, religious professionals, and ministers⁵. The act established an annual limit of 5,000⁶ on the number of special immigrant religious workers and religious professionals that can be admitted to the United States. According to INS data, about 85 percent of those admitted for permanent residence as religious workers in fiscal years 1996 and 1997 were already in the United States. About 17 percent of the applicants were in the United States as nonimmigrant religious workers. The others were in the United States on other types of nonimmigrant visas such as student and business visas. The legislative authority for the special immigrant provisions for religious workers and religious professionals is scheduled to expire in October 1, 2000.

To obtain an immigrant religious worker visa and permanently stay in the United States, a sponsoring individual or organization must first file a petition with the Immigration and Naturalization Service (INS). The petition must include supporting documentation showing that the religious worker will be working for a religious organization and specifying how the worker will be paid or remunerated. In addition, the documentation must state that the religious worker will not be solely dependent on other employment or

⁵ Public Law 101-649, 104 Stat. 5004, 5027 (Nov. 29, 1990). The legislation also applies to spouses and children of religious worker.

⁶ The employment-based preference limitation, under which special immigrant religious workers are included, is 140,000.

the solicitation of funds for support⁷. If INS approves the petition, the individual files an application for an adjustment of status with INS if he or she is already in the United States. If he or she is abroad, the alien files a visa application with a State overseas post. The applicants must state that they intend to work for the organization at the organization's request in a religious capacity and they have been performing religious work continuously for at least 2 years prior to applying for admission.

Nonimmigrant or temporary religious workers can be admitted under the same conditions as special immigrant religious workers, except that they are not required to have prior religious work experience, and their maximum period of stay is limited to 5 years. The authorization for admission of nonimmigrant religious workers did not contain sunset restrictions or any limit on the number that can be admitted. To obtain a nonimmigrant visa, the individual files an application, but no petition is required. The supporting documentation must establish the arrangements made, if any, for remuneration, including the amount and source of any salary; a description of any other type of remuneration; and a statement indicating whether the remuneration will be in exchange for services rendered. The majority of nonimmigrant religious workers applies and receives their visas abroad through State's overseas posts.

⁷ The special immigrant religious workers must have been members, for at least 2 prior years, of a religious denomination having a bona fide, nonprofit, religious organization in the United States (or of a bona fide organization that is affiliated with the re as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986); they must state that they intend to enter the United States to work for the organization at the organization's request in a religious vocation or occupation; and they must have been carrying on the religious work continuously for at least 2 years immediately prior to applying for admission.

THE NATURE AND EXTENT OF FRAUD

Neither INS nor State knows the overall extent of fraud in the religious worker visa program. Both agencies have uncovered incidents of fraud in the religious worker visa program, but they do not routinely investigate questionable visa petitions and applications or report fraud information by type of visa. State's Bureau of Diplomatic Security, the office responsible for investigating the use of counterfeit U.S. passports and visas, has not conducted any investigations of religious worker visa fraud. In addition, State does not maintain complete statistics on the extent of fraud in this program. Individual cases of suspected fraud are generally not investigated unless the suspected fraud is part of a larger scheme to systematically circumvent immigration laws.

The agencies stated that they generally deny questionable visa petitions and applications they receive. Most are not denied for fraud, but for other reasons, such as failing to comply with statutory requirements and regulations, including failure to provide requested documents. They give fraud as the reason for the denial when they have sufficient evidence that the applicant or petitioner willfully misrepresented a material fact. State Department statistics on visa denials do not identify denials by type of visa. However, at our request, State surveyed 83 overseas posts in 1998. They reported several instances of religious worker visa fraud uncovered during processing.

Investigations Illustrate Schemes Used to Circumvent Immigration Laws

At our request, the Fraud Branch at INS' Office of Investigations in Washington, D.C. surveyed fraud units in INS district and suboffices to identify the number of active and closed fraud investigations involving religious worker visas from 1994 to 1998. The units identified 54 such investigations involving about 1,700 petitions⁸ during the 5-year period. The 54 INS investigations, of which about 40 are closed, ranged from cases involving individual fraud schemes to organized fraud rings⁹. For example, the fraud unit in the Chicago District Office investigated 30 cases involving individuals who failed to meet the 2-year experience requirement. At least five INS investigations since 1994 have involved individuals or organizations filing petitions for hundreds of religious workers. For example, in 1995 INS investigated a pastor who filed 450 immigrant religious worker petitions covering over 900 individuals, falsifying the number of years the aliens had been members of the church. The pastor died of natural causes before an indictment could be returned, and the petitions were denied or allowed to expire. About a year ago, INS completed an investigation it started in 1994 involving suspects who provided false supporting documents to INS to show that the individuals had met the 2-year work experience requirement. This investigation, which involved over 400 petitions, ultimately led to the arrests of six individuals, guilty pleas to charges of conspiracy to commit visa fraud, and additional investigations of several similar schemes. In another case, reviewers at INS' Vermont Service Center became suspicious when one organization, which had filed about 100 petitions for immigrant visas during the previous 2 years, filed

⁸ To arrive at these figures, we counted the number of investigations reported by each unit responding to the INS survey and the number of petitions involved when they were identified.

over 200 petitions the third year. The reviewers doubted that the organization could support so many full-time workers and referred the case to an INS district office fraud unit.

Some investigations were initiated because of suspicious activity that State Department consular officials identified. For example, consular officers at the U.S. embassy in Suva, Fiji, became suspicious of a church that filed petitions on behalf of 30 individuals from Fiji who were in the United States on expired visitors visas. The information was forwarded to INS for investigation. The investigation revealed that only 1 of the 30 petitions met the requirements for a religious worker visa. The post suspected that this scheme was related to a larger one involving petitions on behalf of residents of Tonga (near the Fiji Islands) to stay in the United States illegally. Also, the U.S. embassy in Bogota, Colombia uncovered a fraud scheme in which the local church was providing applicants with false documents to demonstrate that the applicants had been members of the church for the required 2-year period. The embassy's antifraud unit discovered that in some cases the applicants had recently joined the church, and in other cases, they had no membership affiliation at all.

PROPOSED CHANGES TO THE VISA PROCESS

INS and State reviewers told us that they were not confident that the agencies screening process is identifying all unqualified applicants and sponsoring organizations. They

⁹ In contrast, INS opened over 6,000 immigration fraud investigations in fiscal year 1997.

attributed the problem to the lack of sufficient information to determine the eligibility of visa applicants and their sponsors. To help remedy the situation, INS told us that it is developing a number of initiatives to improve its visa screening process and to detect and deter fraud. Among the actions INS was considering was a regulatory change regarding the full-time work requirement, the provision of additional documents by a petitioner, and greater use of software to verify petitioners' eligibility.

Lack of Sufficient Information

INS requires petitioners for an immigrant religious worker visa to provide three kinds of evidence: (1) the sponsoring organization must qualify as a nonprofit organization, (2) the petitioner must meet the qualifications for an immigrant religious worker visa, and (3) the petitioner will be paid or otherwise remunerated by the sponsoring religious organization.

INS and State petition reviewers have asserted that sometimes the required supporting evidence, although minimally acceptable, consists of little more than a letter from the sponsoring organization. According to INS and State, this documentation does not adequately establish an applicant's eligibility as a religious worker or the sponsoring organization's ability to pay the worker. Reviewers can deny applications or petitions pending the receipt of additional information, but such actions take more time. Furthermore, the reviewers believe that INS should require information from

independently verifiable sources¹⁰ and that the sponsoring organizations documents should be current. They said that sometimes the sponsoring organizations submit copies of their original tax-exemption form, which may no longer be valid.

Reviewers at some of State's overseas posts raised a related issue concerning the definition of a "religious worker". They reported that the definition of religious worker is too broad, making the religious worker visa program an attractive vehicle for fraud and abuse. Posts sometimes struggled with what they considered to be the "marginal" nature of some of the religious positions the applicants said they were employed to fill. A common sentiment was that almost anyone involved with a church, aside from those occupations that were not intended to be covered by the 1990 religious worker visa legislation, for example, maintenance and cleaning staff, could qualify as a religious worker.

Full-time Work Requirement

In June 1995, INS published for comment in the Federal Register a proposed regulatory change to expressly require that the prior work experience specified for immigrant religious worker visa applications be full-time work. The proposed rule also stated that the documentation supporting an applicant's petition must indicate that the religious worker will be working for the religious organization in the United States on a full-time

¹⁰ Unlike most other employment-based visas, the applicant can file a petition on his or her own behalf and, although supporting documentation from the sponsoring organization is still required the applicant can submit all of it. For most other employment-based visa categories, the potential employer must submit the petition and supporting documentation.

basis. INS officials stated that INS wanted to change the regulation to address the problem of individuals doing part-time voluntary work for a religious organization while working full-time in a secular occupation. They believe that requiring that the two years of experience be full time provides ample evidence of an individual's commitment to working for the religious organization¹¹. At the time of our report, INS told us it planned to finalize the regulatory change by October 1999. However, INS still has not implemented the change.

Additional Documentary Requirements

INS also said it was considering revising its requirements for the documents that must be initially submitted by the applicant for an immigrant visa. They were also considering incorporating these requirements in the proposed regulatory change. These additional documents could include pay stubs to show that the worker was compensated for full-time work and bank statements to demonstrate that the organizations have sufficient financial resources to support their worker or workers. Given that such document could be fabricated, INS may instead request that the intending employer or petitioner provide a description of the qualifications for the position to be filled. This information could be used during the applicant's interview to verify and corroborate that the applicant possesses the right skills for the position. By adding documentation requirements, INS hoped to reduce the number of filings by unqualified applicants.

According to a State Department official, State would participate in any changes to the requirements for immigrant visas and publish visa regulations jointly with INS. The official said that, if appropriate, State would revise its documentary requirements for nonimmigrant visas to correspond with INS' suggested revisions for immigrant visas.

Greater Use of Software to Verify Eligibility

Until recently, INS and State petition reviewers could not quickly and efficiently determine how many petitions had been filed by specific organizations. As previously noted, organizations petitioning for numbers of workers that appear to be inconsistent with the organization's membership size and financial resources to support the workers sometimes indicates fraud. However, until a pattern had been identified, the reviewers could not know if the petitions were potentially fraudulent. For example, one organization referred for investigation had 37 petitions approved in fiscal year 1996 and 76 petitions approved in fiscal year 1997 before the pattern was detected. At the time of our review, the California and Vermont INS Service Centers had developed their own systems using commercial, off-the-shelf software which they believe provided more efficient inquiry and reporting capability than the system INS headquarters provides. In addition, the two service centers were in the process of consolidating their databases so that they can share data. We were told by INS that all of the service centers now have the capability to detect multiple filers and query each other's databases.

¹¹ The Service is also considering including language in regulations for nonimmigrant religious workers stating that the purpose of the religious worker is to work "solely" for the religious organization.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared testimony.

I would be happy to respond to any questions you or other Members may have.

CONTACT AND ACKNOWLEDGMENTS

For future contacts regarding this testimony please call Jess Ford at (202) 512-4128.

Individuals making key contributions to this testimony included Diana Glod, La Verne Tharpes, and Richard Seldin.

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